

**N.D.A.G. Letter to Collins (Sep. 17, 1992)**

September 17, 1992

Mr. Sparb Collins  
Executive Director  
North Dakota Public Employees  
Retirement System  
PO Box 1214  
Bismarck, ND 58502-1214

Dear Mr. Collins:

Thank you for your August 6, 1992, letter concerning bid specifications for the Uniform Group Insurance Program under North Dakota Century Code (N.D.C.C.) ch. 54-52.1. I will respond to your concerns in the order they are presented.

Your first question concerns the state contribution requirements under N.D.C.C. § 54-52.1-06. The pertinent portion of this section provides:

Each department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium, in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program pursuant to section 54-52.1-07. . . .

Specifically, you ask whether the North Dakota Public Employees Retirement System (PERS) can require in its bid specs that the primary carrier submit a flat rate that would be in payment in full for either a single or family plan for state employers. I understand that the traditional method of setting the state contribution requirements under N.D.C.C. § 54-52.1-06 has been to establish a specific premium rate for a single plan and a different specified rate for a family plan. Although this traditional method is one way of complying with this section, nothing in N.D.C.C. § 54-52.1-06 prohibits PERS from submitting requests for bids in the manner you propose. In this fashion, the use of such a flat rate would remain an "amount as determined by the primary carrier of the group contract."

Your second question concerns the bidding requirements under N.D.C.C. § 54-52.1-04. The relevant part of this section provides:

The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage for a

specified term, and shall accept the bid of and contract with the carrier that in the judgment of the board shall best serve the interests of the state and its eligible employees. . . .

Specifically, you ask whether PERS could bid out the health insurance plan for a period of four or six years although historically the Board has bid the health insurance plan every biennium. N.D.C.C. § 54-52.1-04 does not require the Board to bid the health insurance plan every biennium, but rather provides flexibility to the Board to bid such a plan "for a specified term." N.D.C.C. § 54-52.1-04.2 lends support to such an interpretation by directing the Board to bid for an administrative services only contract or a third party administrator contract every other biennium. Although not mandatory, if the Board does bid for a contract for a "specified term" of more than one biennium, it would be prudent for the contract to allow for renegotiation in a manner similar to that provided in N.D.C.C. § 54-52.1-04.2.

You also ask in connection with this concern, if it were acceptable to bid for more than a two-year period for a fully insured arrangement, whether PERS could include a provision permitting losses to be carried forward subject to available funding. I believe that the allowance of such a provision is implicit in the legislative grant of authority under N.D.C.C. § 54-52.1-04 to bid fully insured arrangements for a specified term. If losses could not be carried forward, then many of the beneficial purposes of allowing PERS to bid such arrangements for specified terms would be defeated.

Your third question concerns N.D.C.C. § 54-52.1-04.2. This section provides:

**54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage.** The board may establish a self-insurance plan for providing health insurance benefits coverage under an administrative services only (ASO) contract or a third party administrator (TPA) contract under the uniform group insurance program, if it is determined by the board that an administrative services only or third party administrator plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third party administrator contract only every other biennium, and the board is authorized to renegotiate an existing administrative services only or third party administrator contract during the interim. In addition, individual stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

Specifically, you ask whether the Board could solicit bids for an administrative services only contract or a third party administrator contract for a six-year period. Unlike N.D.C.C. § 54-52.1-04 which provides that the bid be made for a specified term, N.D.C.C.

§ 54-52.1-04.2 plainly directs the Board to solicit bids for an administrative services only contract or a third party administrator contract every other biennium. Thus, the Board could not under present statutes solicit bids for a six-year period.

I trust this satisfactorily addresses your concerns.

Sincerely,

Nicholas J. Spaeth

dec/pg